

1 Honorable Christopher M. Alston
2 Hearing date: June 14, 2019; 9:30 a.m.
3 Hearing Place: Room 7206, 700 Stewart Street, Seattle, WA 98101
4 Responses due by: June 7, 2019; by 4:30 p.m.
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8 **IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

9 In re:) Chapter 7
10 JASON L. WOEHLER,) Bankruptcy No. 18-12299
11 Debtor(s).) TRUSTEE'S MOTION FOR AN ORDER
12 _____) APPOINTING SPECIAL COUNSEL FOR
13) THE TRUSTEE UPON A MIXED
14) HOURLY/CONTINGENT BASIS

15 COMES NOW Nancy James, Chapter 7 Trustee of the above-named estate, through counsel,
16 The Livesey Law Firm, and Rory C. Livesey, and pursuant to 11 U.S.C. § 327 and Fed. R. Bankr.
17 P. 2014, prays for authority to employ, on a mixed hourly/contingent basis plus costs, Borde Law
18 PLLC, and Manish Borde, as special counsel to the trustee. In support of the motion, the trustee
19 states as follows:

20 1. The trustee wishes to employ Borde Law PLLC, and Manish Borde, as litigation
21 counsel in this Chapter 7 case. The trustee has selected Borde Law PLLC because of the firm's
22 knowledge and experience with bankruptcy court litigation, commercial litigation, insolvency and
23 debtor and creditor rights. The trustee believes Borde Law PLLC is well qualified to represent her.

24 2. The debtor's schedules list a possible indemnification claim against a former
25 collection agency client of the debtor. If the claim is proven, the amount of damages would be
approximately \$290,000.

26 3. The trustee is proposing to employ Borde Law PLLC in a mixed hourly/contingent
fee. Manish Borde will be paid an hourly rate of \$295. He shall also receive 15 percent of the gross

**TRUSTEE'S MOTION FOR ORDER APPOINTING
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THE LIVESEY LAW FIRM
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1 proceeds recovered as a result of the litigation. However, the combined hourly rate and the
2 contingency fee will not exceed a total hourly rate of \$495. In other words, Borde Law PLLC will
3 receive a minimum hourly fee of \$295 but a maximum hourly fee of no more than \$495.

4 4. It is in the best interest of the estate for the trustee to employ Borde Law PLLC under
5 a mixed hourly/contingency fee agreement in light of: (a) the risk associated with the contemplated
6 litigation and (b) the estimated maximum recovery for the estate.

7 5. Borde Law PLLC has indicated its willingness to act on behalf of the trustee and to
8 be compensated in accordance with the terms and conditions of the fee agreement attached hereto.
9 No retainer has been paid nor promised.

10 6. The trustee is aware of no connections between Borde Law PLLC and the debtor,
11 creditors, any party in interest, their respective attorneys and accountants, the United States Trustee,
12 and any person employed in the office of the United States Trustee other than as set forth in the
13 attorney's declaration. The attorney is qualified to provide the legal services required in the instant
14 case.

15 7. To the best of trustee's knowledge, Borde Law PLLC is not a creditor of this estate,
16 is disinterested as that term is defined in 11 U.S.C. § 101(14), and represents or holds no interest
17 adverse to the interest of the estate with respect to the matters on which it is to be employed.

18 WHEREFORE, the trustee prays for an order accordingly.

19 RESPECTFULLY SUBMITTED this 14th day of May, 2019.

20 THE LIVESEY LAW FIRM

21 /S/ *Rory C. Livesey*

22 _____
23 *Rory C. Livesey, WSBA #17601*
Attorney for Trustee

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**TRUSTEE'S MOTION FOR ORDER APPOINTING
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**HYBRID FEE AGREEMENT BETWEEN NANCY L. JAMES, CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF JASON L. WOEHLER AND BORDE LAW
PLLC**

Re: *In Re Jason L. Woehler*, Debtor, Bankr. W.D. Wash. Case No. 18-12299-CMA

BORDE LAW PLLC (the “Firm”) has been requested and has agreed to undertake representation of Nancy L. James, in her capacity as chapter 7 trustee for the bankruptcy estate of Jason L. Woehler (the “Client”) with respect to the investigation and litigation of claims against Sacor Financial, Inc. (the “Matter”). This agreement will confirm the terms of agreement relating to representing the Client in the Matter.

1. Description of Services to Be Performed. The Firm will provide the following legal services (the “Services”): Represent the Client in the Matter.

Despite the Firm’s best efforts, the Client understands that the Firm cannot guarantee a favorable result in any litigation or legal representation undertaken by the Firm on behalf of the Client, nor can the Firm guarantee that its interpretation of applicable laws will not be affected by subsequent court decisions or legislative action.

The Firm agrees to keep the Client advised as to the progress of the Services performed by the Firm and further, agrees not to settle or compromise any matters without Client’s prior consent. Client agrees to allow attorneys to handle all legal matters relating to the above-mentioned Services.

2. Reimbursement of Expenses. The Client will, subject to Bankruptcy Court approval, reimburse the Firm for all out-of-pocket expenses (“Expenses”) which it incurs in the course of performing the Services. These Expenses may include, but are not necessarily limited to, court filing and witness fees, court reporter and deposition transcript expenses, photocopying, long distance telephone charges, and attorney travel expenses.
3. Fees for Services.
 - a. The attorney providing the Services will be Manish Borde. Mr. Borde’s usual hourly rate for bankruptcy related lawsuits is \$395.
 - b. The Client agrees to compensate the Firm as follows:
 - i. Mr. Borde shall be compensated at the hourly rate of \$295.
 - ii. The Firm will also receive 15% of the gross proceeds recovered as a result of any litigation, but the Firm shall not be entitled to any contingent fee that results in an hourly rate for Mr. Borde in excess of \$495.
 - iii. In other words, Mr. Borde shall be compensated on an hourly basis for no less than \$295 per hour, and shall not be entitled to a fee that results in an hourly rate greater than \$495.

4. **Firm's Rights in Event of Non-Payment of Billing for Expenses.** Should Client fail to pay the Firm's statement for Expenses within 30 days of Bankruptcy Court approval of said Expenses, the Firm shall have the right to terminate its Services and to withdraw from further representation. If the Firm does so, it shall give the Client reasonable notice of its decision, assist the Client insofar as possible in locating successor counsel, and cooperate with the Client and with such counsel in transferring files and the responsibility for the Client's representation. The Firm may bring an action against the Client to collect any unpaid Expenses approved by the Bankruptcy Court; in the event of such action, the prevailing party shall be entitled to recover from the other the reasonable attorneys' fees incurred in bringing or defending that action, in an amount to be determined by the court.
5. **Cooperation With Counsel.** Client agrees to cooperate with the Firm so that the Firm can perform the Services effectively. In particular, Client agrees to provide the Firm with any relevant records or documents which it may request, to be available (and to make available its agents and employees) on reasonable notice for consultation, depositions, and court appearances as may be necessary, to keep the Firm advised of any changes of address or extended absences so that it may communicate readily with the Client, and otherwise to assist the Firm as it may request. Persistent or repeated failure to cooperate with the Firm shall be grounds for the Firm to withdraw from further representation of the Client and to seek the recovery of its Expenses and Fees therewith.

Client further agrees not to retain other counsel in regard to the Matter without the Firm's prior written consent.

Nancy L. James, Chapter 7 Trustee, agrees to retain the law firm of BORDE LAW PLLC for the Services and on the terms set forth above.

NANCY L. JAMES, CHAPTER 7
TRUSTEE FOR THE BANKRUPTCY
ESTATE OF JASON L. WOEHLER

By: _____ Dated: _____
Nancy L. James

Title: Chapter 7 Trustee

BORDE LAW PLLC

By: _____ Dated: _____
Manish Borde